UNITED STATES OF AMERICA
DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
OFFICE OF ADMINISTRATIVE LAW JUDGES

The Secretary, United States Department of Housing and Urban Development, on behalf of Norman H. Lawson, Cora J. Lawson, Norman M. Lawson and Jamie C. Lawson

Charging Party,

and

Norman H. Lawson, Cora J. Lawson, Norman M. Lawson and Jamie C. Lawson,

Complainants- Intervenors

v.

TEMS Association, Inc.

Respondent.

HUDALJ 04-91-0064-1
HUDALJ 04-91-0066-1
Decided: April 9, 1992

Donna Szczebak O'Neil, Esquire
For the Respondent

Mark A. Scott, Esquire
For the Secretary and Complainants

Robert A. Arabian, Esquire
For Complainants- Intervenors

Before: ROBERT A. ANDRETTA
Administrative Law Judge

INITIAL DECISION

Jurisdiction and Procedure

This matter arose as a result of a complaint filed on September 3, 1990, by Norman H. Lawson, Cora J. Lawson, their son, Norman M. Lawson, and daughter in law, Jamie C. Lawson ("Complainants"). The complaint was filed with the

U.S. Department of Housing and Urban Development ("HUD") and alleges violations of the Fair Housing Act, 42 U.S.C. Sections 3601, *et seq*., as amended by the Fair Housing Amendments Act of 1988, Pub. L. No. 100-430, 120 Stat. 1626 (1988) ("Fair Housing Act" or "Act") based on familial status .[1] It is adjudicated in accordance with Section 2612(b) of the Act and HUD's regulations that are codified at 24 CFR Part 104, and jurisdiction is thereby obtained.

On July 9, 1991, following an investigation of the allegations and a determination that reasonable cause existed to believe that discriminatory housing practices had taken place, HUD's Regional Counsel in Atlanta, Georgia, issued a Determination Of Reasonable Cause And Charge Of Discrimination against TEMS Association, Inc. ("Respondent") alleging that it had engaged in discriminatory practices on the basis of familial status in violation of sections 804(a) and (c) of the Act, which are codified at 42 U.S.C. Sections 3604(a) and (c) and incorporated into HUD's regulations that are found at 24 CFR 100.60 and 100.75 (1989). A trial was conducted in Miami, Florida on December 3 and 4, 1991, and the parties were ordered to submit post-hearing briefs. By order dated January 14, 1992, the time for filing the briefs was extended until February 19, 1992, and they were timely submitted. Thus, this case became ripe for decision on this last named date.

Findings of Fact

The dwelling[2] that is involved in this case is 1604 NW 45 Court, Tamarac, Florida, which is located in a planned community of 247 single-family houses divided into two sections known as Tamarac Lakes I and II ("Tamarac"). (T 62, 424) .[3] Respondent, Tamarac East Maintenance Service, Inc. ("TEMS Association" or "TEMS"), is a non-profit corporation organized pursuant to the laws of Florida and is responsible for enforcing land use and building restrictions that have been adopted by the home owners in Tamarac. It does not own any of the property. (T 51, 425-6). TEMS holds one general meeting per year, and the Board of Directors holds a meeting every other month. Copies of the minutes of these meetings are hand delivered to each house, and copies of the minutes of the annual meetings are mailed to absentee owners of Tamarac homes. (T 454).

Rita Powers is a member of the Board of Directors and president of TEMS, and has been

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[1] The term "familial status" is defined in the Act, at 42 U.S.C. Section 3602(k), as

> ... one or more individuals (who have not attained the age of 18 years) being domiciled with --
> (1) a parent or another person having legal custody of such individual or individuals; or
> (2) the designee of such parent or other person having such custody, with the written permission of such parent or other person.

[2] A "dwelling" includes "any building, structure, or portion thereof which is occupied as, or intended for occupancy as, a residence by one or more families." 42 U.S.C. Section 3602(b).

[3] The transcript of the hearing is cited with a capital T and a page number. The secretary's exhibits are identified with a capital S and an exhibit number; those of the Respondent are identified with an R.

at all times relevant to this case. (T 231). As such, she has the power to preside at all meetings, maintain order, and appoint all committees. (T 436; R 7). There are at least four home owners who volunteer their services to the community, including upkeep of the clubhouse, common areas and the sprinkler system. (T 386). TEMS also has one paid employee who is in charge of maintaining the sprinkler system and also assists in the upkeep of the clubhouse and common areas. (T 479).

Tamarac was initially developed as an "adult community" of single-family homes. The original Use and Building Restrictions ("restrictions"), recorded March 5, 1964, mandated that no permanent resident under the age of 16 years would be permitted. (T 427-8). These restrictions have frequently been a subject of discussion at Board and general meetings. (R 16-18, 27). An "adults only" sign was placed at the entrance to the community in 1981. (T 176, 382, 424, 447; R 12).

At various times, TEMS has attempted to prevent persons 16 years of age and younger from living in Tamarac. TEMS has also attempted to enforce occupancy restrictions which prohibit persons 18 years of age and under from living in Tamarac. (T 155, 234-5, 254, 257-9, 427-8). On January 1, 1989 TEMS amended its restrictions in an attempt to qualify for the exemption in the Act for housing for older persons .[4] The amendment required that newly-occupied homes have at least one resident aged 55 or older. (T 235-7, 250-1, 431-5, 441-6; S 8; R 6). This amendment was recorded along with the signatures and affidavits of a majority of the home owners. (T 431).

Soon thereafter, on April 5, 1989, an attorney from the Broward County Human Relations Board spoke at a general meeting regarding the Fair Housing Amendments Act. He told the assembled residents that the Broward County Human Rights Act, which prohibits housing discrimination against anyone over eighteen years old, rendered the federal law "absolutely worthless as it applied to housing for older persons and familial status in Broward County." (T 702). He explained that the county law, with no exceptions for housing for older persons, was still in effect "notwithstanding whatever the federal law was." (T 703) .[5] Many of the residents left the meeting satisfied that their community was an adult community and qualified for the exemption from the Act for housing for older persons. (T 245-9, 378).

Each homeowner pays a fee of $20 per month to TEMS for which each household is entitled to use the common facilities, which include a clubhouse with a capacity of 107 people. (T 477, 482). The clubhouse is handicapped accessible and has a card room, a television, a library, and a kitchen. (T 106, 482; S 7f-g). A wheelchair, crutches, walkers and canes are kept in the storeroom. (T 482). There are a ladies' room with handicapped railings, a men's room, and a screened patio leading to the pool area. (T 482; S 7o). There is also a ramp leading to the pool area, and the direct access to the pool without going through the clubhouse is also handicapped accessible. (T 483; S 7w).

TEMS facilities also include a pool with a capacity of 31 people, six shuffleboard courts with benches, a horse shoe court, and a picnic area with benches and a barbecue. (T 485-6; S

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[4] See p.7.

[5] This witness further testified that, at the time of the TEMS meeting, he had just returned from having spent five days with HUD "learning the exact definition of what the law is." (T 703).

7x-z, 7aa). Tamarac Lakes I and II are separated by a fenced city park which has been designated as a wildlife sanctuary. It has a walk area and a lake. This park is owned by the City of Tamarac. (T 488-9; S 7cc).

The houses in Tamarac were built by Behring Corporation in 1963 on lots which measure 50 feet by 60 feet. The houses have two bedrooms and one or two bathrooms. There are no stairs in the houses; each has two doors, front and back. There are no sidewalks in the community. There are no garages or carports, and the streets are only 20 feet wide and have no curbs. (T 490-2; S 7a, c, d).

TEMS also provides certain services for the $20 per month fee. These include back yard trash pickup, fertilization of the lawns, and maintenance and repair of the sprinkler system. TEMS also maintains the common areas and facilities, cuts the common area lawn, and trims the shrubs. (T 375, 479). TEMS posts a list of ladies' names on the clubhouse bulletin board with their telephone numbers to provide a network of notification in the event that a resident "needs any help." (T 492; R 25).

TEMS provides continuing education on health and safety matters, including cholesterol screenings, crime watch meetings, safe driving classes, blood pressure clinics, and CPR classes. It obtains speakers on various topics who are provided by Broward County. TEMS provides transportation once per week for the 1-mile trip to the Ward City Shopping Center which includes a walk-in medical center, post office, hardware store, supermarket, beauty parlor, and barber shop. It also coordinates nursing service by volunteer residents. (T 375, 496, 498).

Activities sponsored by TEMS include coffee klatches, arts and crafts, card parties, ladies' luncheons, organized dinners at the clubhouse, potluck suppers, out of town trips, shuffleboard tournaments, and bingo games. (T 506-7, 599). Information about the activities is published in a newsletter which is written and distributed by a civic association. The newsletter also disseminates information regarding services provided by the city and county. (T 477, 510; R 30). In 1990, the monthly $20 assessment brought in $47,846 [sic], and there was a cash balance at the end of the year of $7,955.

On February 28, 1984, Norman M. Lawson and his wife, Jamie C. Lawson, took title to the subject house in Tamarac with full knowledge of the restriction against allowing residence by anyone under age 16. (T 154-5; R 3). They were also aware of the "adults only" signs posted at the entrances to Tamarac at the time they bought the house. (T 176). On June 12, 1984 the Lawsons quit claimed all of their interest in the house to his parents, Norman H. Lawson and Cora J. Lawson, because the younger
Mr. Lawson had been in an automobile accident and he did not want his house in jeopardy of being taken as a result of a judgment against him. (T 55, 155).

The younger Lawsons attempted on January 31, 1986 to again convey an interest in the same real property to "Norman H. Lawson and Cora J. Lawson, his wife, remaining in a life estate for Norman M. Lawson and Jamie C. Lawson, his wife," so as to maximize the homestead exemption for real estate taxes allowed by the State of Florida. (T 156-7; R 1). At the time of the hearing in this case, the complainants themselves were unclear about who has title to the subject property. (T 159, 196-7,
205-6, 210).

On June 1, 1990, Norman M. and Jamie C. Lawson entered into a lease agreement with Randall D. Gibson and Rebecca A. Messer. (T 62, 67; S 3). Some time after Gibson and Messer took possession of the property, the Lawsons completed and submitted the TEMS application for lease approval. (T 76; S 4). Neither Gibson nor Messer was 55 years old or greater at the time and, since they had two minor children, their application was disapproved. (T 68, 75-6). In addition, TEMS directed the complainants to evict Gibson and Messer and their children. (T 224, 327-8; S 4-6). When the complainants refused to comply with TEMS's mandate, TEMS took legal action against them. (T 70, 79, 80-88, 194, 218, 223 230; S 3, 13).

On August 3, 1990, TEMS filed a complaint and demand for injunctive relief in the Broward County Circuit Court (case number 90-23078), seeking to enjoin the Normans from leasing their property in Tamarac prior to obtaining approval from TEMS and from leasing to permanent residents who did not comply with the minimum age requirements of the community. The Gibson- Messer family vacated the premises with knowledge of the pending legal action against the complainants, and the civil action was dismissed for lack of prosecution on October 23, 1991. (T 68-70, 78, 439-440; R 9). The house remained vacant from October 26, 1990 to approximately April 1, 1991.
(T 133, 184, 440-1; R 10).

The house was rented again without an application being submitted and without any form of TEMS approval to Chester and Marion Reely, who had three minor children. (T 135-60). They left when they were informed of the legal actions against the Normans. (T 137). TEMS had again filed a complaint (case number 91-14650) seeking to enjoin the Normans from leasing the property without obtaining approval from TEMS. The house was then rented to Ceasar Maggio, a mother with a minor child, again without approval by TEMS, and she left when she was allegedly told at the pool by an unknown person that she and her daughter were not welcome. (T 146-7).

The TEMS applications, called Questionnaire for Proposed Owner Registration and Questionnaire for Proposed Lessee Registration had been required since January, 1989. (R 33). These questionnaires required information regarding dates of birth of the principal occupants as well as personal and banking reference information. (T 516-7;
R 33). The questionnaires were amended subsequent to November 1990 to enable TEMS to obtain written approval from the applicants to do credit and banking checks. (T 360). All amended questionnaires were required to be completely filled out by all applicants, and TEMS completed driver's license searches, obtained credit reports, and requested information from personal references. (T 515-7; R 32).

Applicable Law

Congress enacted the Fair Housing Act to "[e] nsure the removal of artificial, arbitrary, and unnecessary barriers [which] operate invidiously to discriminate on the basis of impermissible characteristics." *United States v. City of Black Jack*, 508 F.2d 1179 (8th Cir.), *cert. denied*, 422 U.S. 1042 (1974). The Act was designed to prohibit "all forms of discrimination, [even] simple-minded." *United States v. Parma*, 494 F. Supp. 1049, 1053 (N.D. Ohio), *aff'd in relevant part*, 661 F.2d 562 (6th Cir. 1981), *cert. denied*, 465 U.S. 926 (1982).

On September 13, 1988, Congress amended the Act to prohibit, *inter alia*, housing practices that discriminate on the basis of familial status . 42 U.S.C. Sections 3601-19. In

amending the Act, Congress recognized that "families with children are refused housing despite their ability to pay for it." H.R. Rep. No. 711, 100th Cong., 2nd Sess. (1988) ("House Report"). In addition, Congress cited a HUD survey that found 25% of all rental units exclude children and that 50% of all rental units have policies that restrict families with children in some way. *See* Marans, *Measuring Restrictive Rental Practices Affecting Families With Children: A National Survey*, Office of Policy, Planning and Research, HUD (1980). The HUD survey also revealed that almost 20% of families with children were forced to live in less desireable housing because of restrictive policies. Congress recognized these problems and sought to remedy them by amending the Fair Housing Act to make families with children a protected class.

Accordingly, the amended Act and HUD regulations make it unlawful, *inter alia*:

(1) to refuse to ... rent after making a bona fide offer, or to refuse to negotiate ... for the rental of, or otherwise make unavailable or deny, a dwelling to any person because of ... familial status ... . 42 U.S.C. Section 3604(a); 24 CFR 100.50(b)(1) and (3), and 100.60(b)(1) and (2).

(2) to discriminate against any person in the terms, conditions, or privileges of ... rental of a dwelling, or in the provision of services or facilities in connection therewith, because of ... familial status .... 42 U.S.C. Section 3604(b);
24 CFR 100.50(b)(2) and 100.65 (1990).

(3) to make, print, or publish, or cause to be made, printed, or published, any notice [or] statement ... with respect to the ... rental of a dwelling that indicates any ... limitation or discrimination based on ... familial status, ... or an intention to make any such ... limitation or discrimination. 42 U.S.C. Section 3604(c); 24 CFR 100.50(b)(4) and 100.75 (a)-(c).

(4) to represent to any person because of ... familial status ... that any dwelling is not available for ... rental when such dwelling is in fact so available. 42 U.S.C. Section 3604(d);
24 CFR 100.50(b)(5) and 100.80.

(5) to coerce, intimidate, threaten, or interfere with any person in the exercise or enjoyment of, or on account of [that person] having exercised or enjoyed, ... any right granted or protected [under the Act]. 42 U.S.C. Section 3617; 24 CFR 100.400(b).

The Act provides two exemptions for "housing for older persons" from its bar against discrimination on the basis of familial status. These exemptions are for housing for persons 62 years of age or older and housing for persons 55 years of age or older, and each exemption has its own tests. To establish that certain housing is exempt as being for persons aged 62 or older, the housing provider must show that the housing is intended for, and solely occupied by, persons 62 years of age and older. 42 U.S.C. Section 3607(b)(2)(B). There is also a transition provision which allows certain housing to be exempt, even though some persons

residing there are under 62 years of age, if all new residents of the housing after September 13, 1988 were 62 years of age or older at the times that they took up occupancy. *Id.*, at 3607(b)(3)(A).

To establish the exemption for housing for persons 55 years of age or older, the housing provider must show that, at the time of the discrimination on the basis of familial status, it satisfied all of the following three requirements: (1) at least 80% of its units were occupied by at least one person 55 years of age or older; (2) it had published and adhered to policies and procedures which demonstrate the owner's or manager's intent to provide housing for persons 55 years of age or older; and (3)(a) it provided significant facilities and services specifically designed to meet the physical or social needs of older persons, or (b) if the provision of such facilities and services was not practicable, that the housing was necessary to provide important housing opportunities for older persons. 42 U.S.C. Section 3607(b)(2)(C).

Discussion

HUD's Chief Administrative Law Judge, Alan W. Heifetz, articulated the burden of proof test to be applied in housing discrimination cases brought under the Fair Housing Act in *HUD v. Blackwell*, Fair Housing - Fair Lending (P-H) para. 25,001, 25,005 (HUDALJ No. 04-89-0520-1, Dec. 21, 1989) (hereinafter cited as *Blackwell*). This statement of law was upheld by the United States Court of Appeals in *Secretary, HUD On Behalf Of Heron v. Blackwell*, No. 90-8061 (11th Cir. Aug. 9, 1990). It is that the well-established three-part test that is applied by the federal courts to employment discrimination cases which are brought under Title VII of the Civil Rights Act, as set forth in *McDonnell Douglas Corp. v. Green*, 411 U.S. 792 (1973), should also be applied to housing discrimination cases that are brought before this forum. *See, e.g., Politt v. Bramel*, 669 F. Supp. 172, 175 (S.D. Ohio 1989). *See also*, Schwemm, *supra*, 323, 405-10 & n. 137. That burden of proof test is as follows:

> First, the plaintiff has the burden of proving a prima facie case of discrimination by a preponderance of the evidence .... Second, if the plaintiff sufficiently establishes a prima facie case, the burden shifts to the defendant to "articulate some legitimate, undiscriminatory [sic] reason" for its action .... Third, if the defendant satisfies this burden, the plaintiff has the opportunity to prove by a preponderance that the legitimate reasons asserted by the defendant are in fact mere pretext ....

Politt, supra, at 175, *citing McDonnell Douglas, supra*, at 802, 804.

The shifting burdens of proof format from *McDonnell Douglas*, which is spelled out above, is designed to assure that the "plaintiff [has] his day in court despite the unavailability of direct evidence." *Trans World Airlines, Inc. v. Thurston*, 469 U.S. 111, 121 (1984), citing *Loeb v. Truxton, Inc.*, 600 F.2d 1003, 1014 (1st Cir. 1979) (disapproved on other grounds in *Trans World Airlines, Inc., supra*). Therefore, in *HUD v. Murphy*, Fair Housing-Fair Lending (hereinafter cited as *Murphy*) (P-H), para. 25,002 (July 13, 1990), it was further established that where Complainant and the Government can produce direct evidence of discrimination, the shifting burdens of proof analysis set forth in *McDonnell Douglas* need not be applied.

Citing Trans World Airlines, supra, at 121; *see also Teamsters v. U.S.*, 431 U.S. 324, 358, n. 44 (1977).

In this case, there is direct evidence that Respondent discriminated on the basis of familial status by disapproving the Gibson- Messer application and directing Complainants to evict their tenants. In fact, Respondent does not deny that it refused to permit a family with children to live in Tamarac. Instead, it defends itself by claiming that it is within its rights to refuse such occupancy because TEMS enjoys the exemption from the Act that applies to housing for persons who are 55 years of age or older.

In allocating the burden of proof regarding the application of statutory exemptions, courts consistently apply two general rules of construction: (1) one who claims a benefit of an exemption bears the burden of proving that it is qualified for such benefit; and (2) a party does not have the burden of establishing facts peculiarly within the knowledge of his adversary. The first rule is well-established in the federal cases. *See, e.g., United States v. Oates*, 560 F.2d 45, 75 (2nd Cir. 1977) (Federal Rules of Evidence); *United States v. First City National Bank of Houston*, 386 U.S. 361, 366 (1967) (Clayton Antitrust Act); *Wirtz v. C & P Shoe Corp.*, 336 F.2d 21, 28 (5th Cir. 1964) (Fair Labor Standards Act). Thus, since the Respondent wishes to benefit from the exemption for housing for older persons, it bears the burden of showing that it is qualified for it.

The second rule of construction, that a party does not have the burden of establishing facts peculiarly within the knowledge of his adversary, is also well established by federal case law. *See, e.g., United States v. An Article of Device*, 731 F.2d 1253, 1262 (7th Cir. 1984) (Food, Drug and Cosmetic Act); *Old Ben Coal Corp. v. Interior Board of Mine Operations Appeals*, 523 F.2d 25, 36 (7th Cir. 1975). Key elements of the tests for the exemptions that Respondent claims, such as its intent, the manner in which it has operated and maintained the community, and its financial particulars, are peculiarly within its knowledge. Thus, the Respondent here is uniquely able to establish whether it qualifies for the exemption for persons who are 55 or older.

In interpreting the Act in housing discrimination cases, this forum and other courts have recognized these two principles and placed the burden of proof on housing providers claiming the exemptions to show that their facilities qualify. *Murphy* at 25,044; *United States v. Keck*, Fair Housing-Fair Lending (P-H), para. 15,563, 16,445 (W.D. Wash. 1990); *Lanier v. Fairfield Communities, Inc.*, Fair Housing-Fair Lending (P-H), para. 15,632, 16,251 (M.D. Fla. 1990).[6] Accordingly, Respondent here bears the burden of establishing that, at the time of its discrimination, Tamarac met all three criteria for the 55 and older exemption, the last of which is an either/or element. Failure to meet any of the three is fatal to its argument. *Murphy*, at 25,044; *Keck*, at 16,446.

First Test

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[6] Courts have also placed the burden of proof on housing providers claiming other exemptions under the Act. *See, e.g., Singleton v. Gendason*, 545 F.2d 1224, 1226 (9th Cir. 1976) (owner of three single-family houses selling one within 24-month period); *Johnson v. Zaremba*, 381 F. Supp. 165, 166 (N.D. Ill. 1973) (owner-occupied dwelling containing living quarters for only four families).

Respondent has failed to present reliable evidence that, as of June 1, 1990 ,[7] 80% of the dwellings in Tamarac had at least one person 55 years of age or older in residence. Instead, it attempted to present the ages of its residents through a compilation of unreliable lists and affidavits. (T 430-2, 445, 524-30; S 17; R 6, 20, 21, 22). For example, Respondent's exhibit number 20 purports to be a comprehensive list of residents and their ages as of March 12, 1989. This date is the effective date of the Act, and is not relevant as an occupancy date in this case. Moreover, the exhibit was actually compiled as of 30 to 60 days before the hearing, which is also an irrelevant date nearly 18 months after the act of discrimination occurred. Nothing about this document attempts to show a continuity of residence that would make the occupancy statistics of these two dates useful. Further, some of the entries contain simple arithmetic errors which have the effect of misstating certain residents' ages. Finally, some of the listed names and ages are those of absentee homeowners; not the residents of the particular houses.

The discrepancies on document R-20 are even more telling since this document was prepared in anticipation of litigation, but was submitted purporting to reflect residency at a different time. In addition, no evidence was offered demonstrating that the respondent required any valid source documentation prior to recording the residents' ages on the payment and ledger cards from which this exhibit was derived.

Second Test

The second test asks whether the Respondents published and adhered to policies and procedures that demonstrate their intent to provide housing for persons 55 or older. HUD's regulations set out six factors that are drawn from the Act's legislative history which are to be used in determining whether a housing facility meets this requirement. These six factors are: (1) written rules and regulations; (2) the manner in which the housing is described to prospective residents; (3) the nature of advertising; (4) age verification procedures; (5) lease provisions; and (6) the actual practices of the owner or manager in enforcing relevant lease provisions and relevant rules and regulations.
24 CFR 100.304(c)(2). They were applied in *Murphy* at 25,050, where the administrative law judge stated:

> These tests are designed to establish whether a housing provider has demonstrated an intent to provide housing for persons 55 or older by its adoption and adherence to policies and procedures which manifest that intent. The focus of the tests is on whether: (1) the housing provider holds itself out as providing housing for persons 55 or older, and (2) the housing provider has demonstrated that it has consistently done so.

A housing provider cannot meet the policies and procedures requirement simply by amending its rules and regulations when it learns of a pending complaint against it. Rather, the housing provider must unequivocally hold its housing out to the public as housing for

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[7] Since the exact dates of TEMS's disapproval of the application and demand for eviction of Complainants' tenants are unknown, I have determined to use the date of the lease as the date of the discrimination.

persons 55 or older, and must do so consistently. These six factors are meant to test that by determining an intent both in theory and practice to provide housing that is reserved for people of the qualifying age. *See* 24 CFR Ch. I, Subch. A, App. I at 572 (1990). While Respondents in this case took some half-hearted steps towards implementing a policy of changing Tamarac to housing for persons 55 or older, its actions were too little and too late: they were after the fact and they failed to fulfill any of the six tests required to show that they had published and adhered to appropriate policies and procedures.

For example, Respondent's age verification procedures, factor number four, belie its claim to the exemption for persons 55 and older. As discussed above, the documents that Respondent relies upon to establish the age of the residents is riddled with errors and focused on the wrong date or dates. In addition, contrary to the requirements of factor number six, Respondent's actions to enforce its claimed age restrictions have been inconsistent and sporadic, at best.

More specifically, a review of enforcement actions between February 2, 1989, and May 8, 1991, shows that at least five applications for home ownership were approved in connection with persons under age 55, who had no children, while no applications were approved for families with children. (S 16). The same pattern of selective approval holds true with respect to rental applications between April 26, 1990 and December 27, 1990. (S 16). Applications by families with children under the age of 18 were disapproved, while applications were approved for individuals of any age, so long as children were not involved.

Third Test, First Alternative

If it had met the six tests, the Res pondent would still have to show that TEMS Association either provided significant facilities and services specifically designed to meet the physical or social needs of older persons or, if the provision of such facilities and services was impracticable, that the housing was necessary to provide important housing opportunities for older persons. The exact facilities and services that are "significant" in a particular instance will necessarily vary based upon the needs of the residents and the location of the housing. But it is clear that Congress intended that the facilities and services must truly be substantial. *See* House Report at 32.

To determine that the facilities and services are significant, a housing provider must show that they have been "designed, constructed, or adapted to meet the particularized needs of older persons." *Murphy* at 25,004.[8] He must show that the facilities and services indicate a "genuine commitment to serving the special needs of older persons." *Keck* at 16,446. In finding that the facilities and services offered in *Murphy* did not meet the physical and social needs of older people, the administrative law judge focused on the fact that the respondents'

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[8] Significantly, in formulating this test, the administrative law judge who decided *Murphy* noted that:

> Congress did not establish an unqualified right for older persons to live in childless surroundings. The three part statutory test is intended to require the party claiming the exemption to prove by objective evidence that the special needs of the older persons residing in the community are such that they legally justify and permit the exclusion of families with children.

facilities and services : (1) failed to exhibit significant design, construction, or adaptation for the handicapped or infirm, and (2) did not indicate significant use by or for older persons. For example, the judge specifically cited the inability of an unassisted person in a wheelchair to gain access to the mobile home park's clubhouse and the absence of fixtures for the handicapped in the clubhouse rest rooms. He also noted explicitly the lack of social or recreational programs offered at the park. *Murphy* at 24,045.

Next, the judge in *Murphy* focused on the fact that the facilities and services set out as examples in HUD's regulations were not well represented in the park. For example, the mobile home park provided no emergency or preventative health care, or information, counseling, or homemaking services. It had no congregate dining facilities, and it provided no transportation to the park's residents even though the closest bus stop was three or four miles away and the nearest grocery store was two miles away. Further, there was no coordinator, organizer, or any educational, social, or recreational activities. *Id*. at 25,046. He also rejected the respondents' attempt to rely on the facilities and services that were available elsewhere locally. While acknowledging that it is possible to have a situation where other facilities or services are "so integrally related to the community claiming the exemption that [they are], in effect, on the premises," he articulated the more appropriate general rule that "the availability of senior centers elsewhere in the same geographic location does not tend to set a particular community apart." *Id*. The administrative law judge who decided *Keck* reached the same conclusion through the same analysis. (16,446; 16,249).

As with other requirements of the housing for persons aged 55 years or older exemption, a housing provider must establish that the housing facility had significant facilities and services as of the date that he discriminated on the basis of familial status. A review of the facilities and services TEMS provided on the date of Respondent's discrimination, as noted above in the Findings of Fact, reveals that Respondents failed to show that Tamarac meets this part of the statutory requirements for the exemption. This conclusion is inevitable when Respondent's paltry facilities and nearly nonexistent services are compared to those facilities and services that are listed in HUD's regulations at 24 CFR 100.304(b)(1) or to those found to be inadequate in *Murphy*.[9]

Third Test, Second Alternative

If a housing provider fails the significant facilities and services test, the Act provides an alternative means to complete the third requirement for those housing facilities where it is impracticable to provide significant facilities and services. This alternative was created for "those unusual circumstances where housing without such facilities and services provides important housing opportunities for older persons." 134 Cong. Rec. S10456 (daily ed. Aug. 1, 1988). This alternative route consists of a two-part test requiring the housing provider to show that "the provision of such facilities and services is not practicable, [and] that such housing is necessary to provide important housing opportunities for older persons." 42 U.S.C. Section 3607(b)(2)(C)(i); 24 CFR 100.304(b)(2).

The HUD regulation cited immediately above was carefully drawn from the legislative

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[9] Compare, for example, the facilities and services found to be inadequate in *Murphy* that are listed and discussed at para. 25,045.

history of the Act and lists seven factors to be considered in determining whether a housing facility meets this alternative to the significant facilities and services requirement. The seven factors are:

> (1) whether the owner or manager of the facility has endeavored to provide significant facilities and services designed to meet the physical or social needs of older persons;
>
> (2) the amount of rent charged, if the dwellings are rented, or the price of the dwellings if they are offered for sale;
>
> (3) the income range of the residents;
>
> (4) the range of housing choices for older persons in the area;
>
> (5) the demand for housing for older persons in the area;
>
> (6) the availability of other, similarly priced housing for older persons in the area; and
>
> (7) the vacancy rate of the facility.

It is clear from the testimony that TEMS has never had significant facilities and services for the elderly at Tamarac, nor has it ever endeavored to acquire them. Respondent says that providing the facilities and services would be too costly, but it never assessed what would be required of the residents, what it would cost, and what the residents would be willing to pay. Moreover, an examination of Respondent's operating expenses indicates that it could afford to add such services. The cost of making modifications to the clubhouse, for example, is well within its means. (R 15, 24). Thus, TEMS fails to meet the impracticability test because it has made no effort to provide facilities and services or even to asses their feasibility. *See Murphy* at 25,047; *Keck* at 16,446.

The remaining six factors listed in HUD's regulation relate to whether the housing is necessary to provide an important housing opportunity for older persons in the community. In *Murphy* the administrative law judge said:

> These factors bear on the question whether older persons living in the community have nowhere else to go after it has been determined that (1) significant facilities and services are not available in the community, and (2) that it is impracticable to provide significant facilities and services for those older persons. This test only comes into play if the "impracticability" test has been satisfied. It is designed to deal with the unusual situation where a community not meeting the tests of 3607(b)(2)(C) will still be allowed to exclude families with children because the older persons in the area are deprived of affordable housing. (at 25,048).

Although Tamarac may provide affordable housing to moderate income individuals, it

is not, for that reason alone, an "important housing opportunity." Tamarac is not a unique housing situation that low or moderate income older persons could not find elsewhere in the vicinity. In fact, Respondent's evidence established that older persons seeking housing in Broward County have an abundance of housing opportunities. (T 657). As Congress made clear, lower and middle income housing is not exempt from the requirements of the Fair Housing Act simply by virtue of its cost. 134 Cong. Rec. S10549 (daily ed. Aug. 8, 1988) (statement of Senator Kennedy); 134 Cong. Rec. H6498 (daily ed. Aug. 8, 1988) (statement of Representative Edwards).

Thus, taken as a whole, the Respondent has failed to meet any of the three criteria required to qualify it for the exemption from the Act that is provided for housing for persons 55 years of age and older.

Complainants

When Norman M. Lawson and Jamie P. Lawson conveyed their house by quitclaim to Norman H. Lawson and Cora J. Lawson, they conveyed all of the rights they had in the property located in Tamarac. Under Florida law, in the execution and delivery of a quitclaim deed, the grantees acquire such title as the grantors held at the time of the conveyance. 19 Fla. Jur. 2d, Deeds, Sec. 151. A quitclaim deed puts the grantees in the place of the grantors as to any interests the grantors had in the land at the date of the deed. *Snow v. Lake*, 20 Fla. 256 (1984).

Almost two years later, Norman M. Lawson and Jamie P. Lawson attempted to quitclaim a life estate to the property to Norman H. Lawson and Cora J. Lawson, leaving a remainder interest for themselves. However, and leaving aside the question whether the wording of the second conveyance is valid, at the time they attempted this second conveyance, the younger Lawsons had no interest in the land to convey since they had already quitclaimed it to the elder Lawsons two years earlier. Under Florida law, if the grantors have no interest in the described land at the time of conveyance, the deed conveys nothing to the grantee. *Goldtrap v. Brian*, 77 So. 2d 446 (Fla. 1954); *June Sand Company v. Devon Corp.*, 23 So. 2d 621 (Fla. 1945). It follows that the second deed conveyed no interest back to the younger Lawsons. Consequently, the only parties who have any legal right, title, or interest to the property in Tamarac are Norman H. Lawson and Cora J. Lawson.

Nonetheless, under the Act, "aggrieved persons" have standing to file a complaint alleging discrimination. Such persons are defined by the Act as "any person who claims to have been injured by a discriminatory housing practice; or ... believes that such person will be injured by a discriminatory housing practice that is about to occur." Nothing requires that a complainant have title to the dwelling in question. 42 U.S.C. Sec. 3601(i); 24 CFR 100.20. The four complainants are "aggrieved persons" within the meaning of the Act because the actions of Respondent resulted in their losing existing tenants, prevented their renting the house to other tenants, and cost them, and especially the younger Lawson, a great deal of additional inconvenience. Accordingly, no complainant will be dismissed as such because of the status of title to the house.

Ultimate Conclusions

The Secretary has established that Respondent denied the application for Gibson and Messer to live in the subject dwelling with their minor children and that it took legal action at least twice to compel the Lawsons to evict their tenants with children. The Secretary has also established that Respondent has for some time maintained a rule against residence by persons under 18 years of age.

More specifically, by refusing to allow Gibson and Messer to reside with their children in the Lawson house because of their familial status, and by taking legal action to enforce its illegal rules, Respondent has violated the provisions of the Fair Housing act that are codified at 42 U.S.C. Sections 2604(a) and HUD's regulations that are found at 24 CFR 100.50(b)(1) and (3), and 100.60(b)(1) and (2). By adopting a rule prohibiting acceptance as community residents any families with children under the age of 18 years, Respondent has violated provisions of the Fair Housing Act that are codified at 42 U.S.C. Section 3604(c) and HUD's regulations that are found at 24 CFR 100.50(b)(4) and 100.75(a)-(c).

Remedies

Section 812(g)(3) of the Act provides that where an administrative law judge finds that a respondent has engaged in discriminatory practices, the judge shall issue an order "for such relief as may be appropriate, which may include actual damages suffered by the aggrieved person and injunctive or equitable relief." 42 U.S.C. Sec. 2613(g)(3). That section further states that the "order may, to vindicate the public interest, asses a civil penalty against the respondent." The maximum amount of a civil money penalty is dependent upon whether the respondent has been adjudged to have committed prior discriminatory practices. Where the respondent has not been adjudged to have committed any prior discriminatory practices, any civil money penalty assessed against the respondent cannot exceed $10,000. *See also* 24 CFR 104.910(b)(3) (1990). Otherwise, the maximum allowable civil money penalty is $25,000.

The government, on behalf of itself and the complainant, has prayed for: (1) an award of damages to compensate Complainants for economic losses, inconvenience, and emotional distress; (2) the imposition of a civil penalty of $25,000 on the respondent; and (3) injunctive relief to ensure that Respondent does not engage in unlawful housing practices in the future.

Damages

The Fair Housing Act provides that relief may include actual damages suffered by the Complainant. 42 U.S.C. Section 3612 (g)(3). In this case, on behalf of the complainants, the Secretary claims that, during the time the dwelling was vacant, Complainants purchased advertising in the amount of $200, incurred mortgage expenses of $1,932, paid annual real estate taxes in the amount of $850, contracted for carpet cleaning services at a cost of $160, paid association dues in the amount of $15 per month ,[10] painted the interior at a cost of

[10] The Secretary does not explain why he claims only $15 per month in association dues rather than the $20 per month which was shown to be required of each homeowner.

$1,175, and incurred at least $750 in legal expenses in defense of TEMS's legal actions against them, and, further, that Complainants remain responsible for additional legal fees in an amount yet to be determined due to the instant action. (T 133-4, 140-4, 151, 181-4, 199, 397-8, 409-11,
419-20).

Complainants are bound to make their mortgage payments and pay their real estate taxes and association dues whether they have a tenant living in the house or not. So, these items are not compensable in this case. Cleaning and painting are also ordinary expenses associated with a rental unit, and since the Secretary did not state any factors that would tie these expenses to the circumstances of this case, they also cannot be included in the compensation for actual damages. Thus, actual damages are limited to the legal fees of $750.[11]

In addition to actual damages, a Complainant is entitled to recover damages for inconvenience and emotional distress caused by a Respondent's discrimination. *See, e.g., Blackwell, supra,* at 25,001; *Parker v. Shonfeld*, 409 F. Supp. 876, 879 (N.D. Ca. 1976). Because these abstract injuries are not subject to being quantified, courts have ruled that precise proof of the actual dollar value of the injury is not required. *Block v. R.H. Macy & Co.*, 712 F.2d 1241, 1245 (8th Cir. 1983); *Steele v. Title Realty Co.*, 478 F. 2d 380, 384 (10 Cir. 1973). In this case, the Secretary states that all the complainants have suffered emotional distress as a result of TEMS's actions, but he makes no claims for compensation for any inconveniences that the complainants may have endured.

The administra tive law judge assigned to decide a case of housing discrimination is accorded wide discretion in setting damages for emotional distress, and is guided in determining the size of the award by the egregiousness of the Respondent's behavior and the Complainant's reaction to the discriminatory conduct. R. Schwemm, *Housing Discrimination Law*, 260-62 (1983). Awards for emotional distress in relevant federal case law range far and wide, depending on the circumstances .[12] Therefore, a review of federal cases is not very helpful as guidance here.

However, awards of damages for emotional distress have already been made by this forum in housing discrimination cases, and these can be looked to for some guidance. In *Blackwell*, $40,000 was awarded to a black couple for the embarrassment, humiliation, and

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[11] The Secretary did not state in his post-hearing brief why he did not demand loss of rent for the periods in question. It is not appropriate, however, for this forum to assume demands that are not made.

[12] *See, e.g., Block v. R.H. Macy & Co., Inc.*, 712 F.2d 1241 (8th Cir. 1983) ($12,402 award for plaintiff's mental anguish, humiliation, embarrassment and stress); *Grayson v. S. Rotundi & Sons Realty Co.*, 1 Fair Housing-Fair Lending (P-H) para. 15,516 (E.D.N.Y. Sep. 5, 1984) (compensatory damage awards of $40,000 and $25,000 for two plaintiffs' embarrassment and humiliation); *Parker v. Shonfeld, supra* ($10,000 compensation award for embarrassment, humiliation, and anguish); *Phillips v. Hunter Trails Community Ass'n.*, 685 F.2d 184 (7th Cir. 1982) (allowance of $10,000 to each plaintiff at a time when that court had never before exceeded $5,000). *Cf. Ramsey v. American Air Filter Co., Inc.*, 772 F.2d 1303 (7th Cir. 1985) (in employment discrimination case, jury award of $75,000 as compensatory damages for plaintiff's mental distress found excessive, and $35,000 awarded based upon the record).

emotional distress of having been denied a house because of their race. This was a clear case of open and blatant racial discrimination perpetrated by a real estate agent. In *Murphy, supra*, awards of $150, $400, $800, $1,000, and $5,000 were made for emotional distress and loss of civil rights, with the award of $150 being made to a party who "... suffered the threshold level of cognizable and compensable emotional distress." (at 25,057). In *HUD v. Guglielmi and Happy Acres Mobile Home Park*, Fair Housing - Fair Lending (P-H), para. 25,070 at 25,079, I awarded $2,500 to the Complainant where I found that the Respondents had "... contributed significantly to [Complainant's] actual and perceived loss of civil rights, feelings of embarrassment and humiliation, and general emotional distress" for the better part of a year, and in *HUD v. Baumgardner*, Fair Housing - Fair Lending (P-H), para. 25,094 at 25,101, I awarded $500 to a young man who had been discriminated against on the basis of sex "because men are messy tenants". He did not appear to be a man of vulnerable constitution, but he said that he was angry, hurt, and frustrated by the denial of the house he wanted and that it was a source of anger and distress for a few months. Finally, in *HUD v. Riverbend, et al*, HUDALJ 01-89-0676-1 (Oct. 15, 1991), at p. 18, I awarded $2,000 to a complainant who had been denied a two-bedroom apartment for himself, his wife and two infant boys because of an occupancy standard limiting occupancy of a two-bedroom apartment to three people.

In this case, all four complainants testified that they have suffered emotional distress as a result of TEMS's actions. (T 147, 151, 198-9, 207-8, 211-2). Norman H. Lawson bore the brunt of having to deal with the legal procedures without being able to afford much legal help as well as with the inconveniences of having to re-rent the house twice after believing he was finished with the process for at least a lease's term. Jamie Lawson said that the stress felt by her husband effected their home life and thereby caused her some emotional distress. Cora Lawson testified that she was offended by the concept of people not being able to live where they choose and the association's efforts to enforce its restrictions.

None of the complainants was the direct victim of discrimination; none was prohibited from living in a home of choice. All of the complainants were only involved with the house as a rental unit; *i.e.*, as a business venture. Business carries a risk of stressful encounters which do not rise to the level of sudden and unexpected discrimination against one's self. Nonetheless, the emotional distress caused to the complainants here would appear to have somewhat surpassed the "threshold level of cognizable and compensable emotional distress" mentioned in *Murphy*. Accordingly, I conclude that an award of $500 is appropriate to these circumstances.

Civil Penalty

The Government has also asked for the imposition of a civil penalty of $25,000. This is the maximum that can be imposed on a respondent who has been adjudged to have committed a prior discriminatory housing practice. *See* 42 U.S.C. Section 3612(g)(3)(A); 24 CFR 104.910(b)(3). In addressing the factors to be considered when assessing a request for imposition of a civil penalty, the House Report on the Fair Housing Amendments Act of 1988 states:

> The Committee intends that these civil penalties are maximum, not minimum, penalties, and are not automatic in every case. When

> determining the amount of a penalty against respondent, the ALJ should consider the nature and circumstances of the violation, the degree of culpability, and any history of prior violations, the financial circumstances of that respondent and the goal of deterrence, and other matters as justice may require.

The nature and circumstances of the violation in this case are serious. While discrimination is often subtle and difficult to show, in this case the Respondent openly stated to Complainants that they could not have a family with children live in their house. They turned down the first application for membership in TEMS Association on that basis. As to the degree of culpability, unlike in *Blackwell* and *Baumgardner*, where the offending respondents were real estate agents, and *Riverbend*, where the respondents were large corporate apartment owners and property managers, the respondent in this case is a club made up for the most part of resident retirees, and the president of that club is a resident of Tamarac and a volunteer office holder.

The Respondent was in fact previously adjudged to have committed a prior act of housing discrimination by the Broward County Human Relations Board. (S 14). The Secretary asserts that TEMS "wantonly ignored" that decision. It would appear, however, that the people of Tamarac tried, albeit inadequately, to change the nature of their community so as to qualify for the exemption from the Act that is provided for housing for persons who are 55 years old and older. It was, at best, their intent. However, the evidence showed that Tamarac could not be considered to so qualify under any conscientious reading of the Act.

Based upon a consideration of the factors directed by Congress and to vindicate the public interest, I conclude that it is appropriate in this case to impose a civil penalty of $4000 upon Respondent TEMS. This amount is double the $2,000 civil penalties that were imposed in *Murphy* and *Guglielmi* where discrimination was found but there were mitigating circumstances similar to those in this case .[13] It contrasts appropriately with the maximum permissible penalty of $10,000 that was imposed in *Blackwell* for an egregious case of racial discrimination in which the Government went to great lengths to investigate and prepare its case in detail. It is also in reasonable accord with the $4,000 that was imposed in *Baumgardner*, where the discrimination was open and blatant, and the discriminating respondent was also a real estate agent of long experience, but there was no previous adjudication of discrimination.

Injunctive Relief

Section 812(g)(3) of the Fair Housing Act also authorizes the administrative law judge to order injunctive or other equitable relief. Here, injunctive relief is necessary to ensure that

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[13] In *Murphy*, it was found that the Respondents discriminated against families with children in an erroneous attempt to qualify for the exemption from the Act for housing for older persons that is provided at 42 U.S.C. Section 3607(b). In *Guglielmi*, it was also found that the Respondents discriminated against families with children in an attempt to maintain their unqualified trailer park as housing for older persons. In both of these case, unlike the situation in this case, the laws and regulations prohibiting discrimination on the basis of family status took effect only days before the events complained of began to take place. Finally, there was no situation of a prior adjudication of housing discrimination in the two cited cases.

the respondent will not again conduct itself in this manner. To that end, the Secretary has requested that TEMS be ordered to abstain from discriminating further on the basis of familial status. The Secretary also asks that the respondent be required to apply standards for acceptance and rejection of applicants for purchase or lease in Tamarac in an objective manner, without regard to familial status. He further asks that Respondent be required to remove the remaining "adults only" sign from the entrance to the community and to discontinue use of any other written documentation or advertisement that indicates a discriminatory preference or limitation based on familial status. Finally, the Secretary states that Respondent should be enjoined from interfering with the complainants in their efforts to sell or rent their rental property. All of these requests are reasonable and are deemed appropriate under the totality of the circumstances of this case. Accordingly, they will be imposed, and the specific provisions of injunctive relief are set forth in the Order issued below.

Order

Having concluded that Respondent TEMS Association violated provisions of the Fair Housing Act that are codified at 42 U.S.C. Sections 3604(a)-(c), as well as the regulations of the U.S. Department of Housing and Urban Development that are codified at 24 CFR 100.50(b)(1)-(4), 100.60(b)(1)-(2), 100.65, and 100.75(a)-(c), it is hereby

ORDERED that,

1. Respondent is permanently enjoined from discriminating against Complainants, or any member of their families, with respect to housing, because of familial status, and from retaliating against or otherwise harassing Complainants or any member of their families. Prohibited actions include, but are not limited to, all those enumerated in the regulations codified at 24 CFR Part 100 (1989).

2. Respondent TEMS shall institute record keeping of the operation of Tamarac which is adequate to comply with the requirements set forth in this Order, including keeping all records described in paragraph three of this Order. Respondent TEMS shall permit representatives of HUD to inspect and copy all pertinent records at reasonable times after reasonable notice.

3. On the last day of every third month beginning June 30, 1992, and continuing for three years, Respondent TEMS shall submit reports containing the following information regarding the previous three months, for all properties owned or otherwise controlled by Respondent, to HUD's Atlanta Regional Office of Fair Housing and Equal Opportunity, 75 Spring Street, S.W., Atlanta, Georgia 30303-3388, provided that the director of that office may modify this paragraph of this Order, as deemed necessary to make its requirements less, but not more, burdensome:

> a. a duplicate of every written application, and written description of every oral application, for all persons who applied for purchase or lease of any houses in Tamarac, including a statement of the person's familial status, whether the person was rejected or accepted, the date of such action, and, if rejected, the reason for the rejection;

b. a list of vacancies at all Tamarac houses including the departed person's familial status, the date of termination notification, the date moved out, the date the house was next committed to occupancy, the familial status of the new occupant, and the date that the new occupant moved in;

c. current occupancy statistics indicating which of Tamarac's houses are occupied by families or groups including children under 18 years old;

d. sample copies of any advertisements published or posted during the reporting period, including dates and what, if any, media was used, or a statement that no advertising was conducted;

e. a list of all persons who inquired in any manner about renting or buying one of the Tamarac houses, including their names, addresses, familial status, and the dates and dispositions of their inquiries; and

f. a description of any rules, regulations, leases, or other documents, or changes thereto, provided to or signed by any applicants seeking occupancy at Tamarac.

4. Respondent TEMS shall inform all its agents and employees, including officers and board members of the association, of the terms of this Order and shall educate them as to these terms and the requirements of the Fair Housing Act.

5. Within forty-five days of the date on which this Initial Decision and Order is issued, Respondent TEMS shall pay damages in the amount of $1,250 to Complainants to compensate them for the losses that resulted from Respondent's discriminatory activity.

6. Within forty-five days of the date that this Initial Decision and Order becomes final, Respondent TEMS shall pay a civil penalty of $4,000 to the Secretary, United States Department of Housing and Urban Development.

7. Within fifteen days of the date that this Order becomes final, Respondent TEMS shall submit a report to HUD's Atlanta Regional Office of Fair Housing and Equal Opportunity that sets forth the steps it has taken to comply with the other provisions of this Order.

8. Immediately upon the receipt of this Order, Respondent TEMS shall remove all signs restricting occupancy of Tamarac on the basis of familial status or age and shall refrain from posting such signs until such time that it may qualify under the Act to restrict occupancy of Tamarac.

This Order is entered p ursuant to the applicable section of the Fair housing Act, which is codified at 42 U.S.C. Section 3612(g)(3), and HUD's regulation that is codified at 24 CFR 104.910, and it will become final upon the expiration of 30 days or the affirmance, in whole or in part, by the Secretary within that time.

Robert A. Andretta
Administrative Law Judge

Dated: April 9, 1992